IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No.70 of 2007

Date of Decision : 16.11.2007

Sobhia Ram …Appellant.

Versus:

State of H.P. …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. Rakesh Jaswal, Advocate.

For the respondent : Mr. Ashok Chaudhary, Addl. A. G.

Sanjay Karol, J. (Oral).

The present appeal arises out of the judgment dated 2.2.2007 passed by the Special Judge, Fast Track Court, Chamba, in Sessions Trial No. 97/2005, titled as State v. Sobhia Ram, whereby the present appellant has been charged and convicted of an offence u/s 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo rigorous imprisonment for nine years and fine of Rs.90,000/- and in default thereof, to further undergo rigorous imprisonment for two years.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

After making a detailed submission, the learned counsel for the appellant restricted his submissions with regard to the quantum of sentence only and has referred to a decision of this Court reported in ***Dharam Pal*** v. ***State of H.P***. (Latest HLJ 2007 (HP) 827).

In the instant case, contraband has been reported by the Chemical Examiner vide report Ext.PW-9/D to contain the contents of charas and not the charas. This is because of the presence of resin in the same and the percentage of the resin is 28.12%. About the rest of the contents, the report of the Chemical Examiner is silent. Therefore, it cannot be said that the entire quantity of contraband weighing 900 gms. was charas. It is not the case of the prosecution that the contraband was in the form of a mixture. The appellant has been charged for possessing charas i.e. resin. Therefore, in terms of weight, the charas content is approximately 252 gms. which is more than the small quantity and lesser than the commercial quantity as fixed vide Entry No.23 of the notification issued by the Central Government. The present view has also been taken by this Court in ***Dharam Pal*** (supra) which is a judgment rendered by a Division Bench of this Court, wherein it is also held as under:-

> "The stuff recovered from the appellants has only one psychotropic substance, i.e. 'Charas' (resin) in it. About the rest of the stuff there is no report and, therefore, there is no escape from assumption that the same is a neutral material. Now, if it has only one psychotropic substance, i.e. 'Charas'

> (resin), the nature of the quantity is to be determined by reference to the limits of 'small quantity' and 'commercial quantity' prescribed for 'Charas', which means resin of cannabis plant."

In view of the fact that the total quantity of Charas recovered from the appellant is not 900 gms. but 252 gms. which is above small quantity and less than commercial quantity, therefore, in my view, the sentence needs to be reduced from 9 years to 3 years and fine from Rs.90,000/- to Rs.20,000/- and in default of payment of the same to further undergo rigorous imprisonment for three months. Ordered accordingly.

The appellant shall undergo the substantive sentence as mentioned hereinabove and the appeal stands disposed of as partly allowed.

(Sanjay Karol),
Judge.

November 16, 2007
(rana)